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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,637	03/05/2002	Kurt R. Linberg	P-8557.05	9741

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MEDTRONIC, INC.
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EXAMINER

EVANISKO, GEORGE ROBERT

ART UNIT PAPER NUMBER

3762

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/091,637	Applicant(s) LINBERG, KURT R. <i>W</i>	
	Examiner George R Evanisko	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/13/04 has been entered.

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Webb et al (WO 98/42407). Webb states on page 5 that the remote center can communicate with the programmer through the internet and states throughout the specification the use of the communication connection using a protocol that emulates a client/server model so that commands entered on the programmer are executed as if entered directly on the remote center.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-23 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Snell (6249705). Snell states: that the programmer and server use a X.25, AppleTalk, TCP/IP, etc protocol (col 4); the network server includes components for receiving commands and data from the network programmers (col 4); the network server is controlled, via appropriate commands entered at the network programmer (col 4); the network server provides data...on demand to the network programmer based upon commands entered at the network programmer (col 7); the network server provides computing services to the network programmer and executes programs on-demand utilizing any combination of data provided by the network programmer (col 7). Snell therefore teaches a communications protocol that emulates a client/server model wherein commands entered on the programmer are executed as if entered directly on the remote data center.

In the alternative, Snell discloses the claimed invention except for the communications protocol that emulates a client/server model wherein commands entered on the programmer are executed as if entered directly on the remote data center (i.e. Telnet). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the medical communication system as taught by Snell, with a communications protocol that emulates a client/server model wherein commands entered on the programmer are executed as if entered directly on the remote data center since it was known in the art that medical communication systems use a communications protocol that emulates a client/server model wherein commands entered on the programmer are executed as if entered directly on the remote

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data center (known to use TCP/IP based applications, such as Telnet) to easily and quickly exchange data over the internet or a communications network.

Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snell.

Snell discloses the claimed invention except for the database including usage logs including clock/timer data relating to the number of connections between the programmer and an IMD and error logs. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the medical computerized system as taught by Snell, with a database including usage logs including clock/timer data relating to the number of connections between the programmer and an IMD and error logs since it was known in the art that medical computerized systems use a database including usage logs including clock/timer data relating to the number of connections between the programmer and an IMD and error logs to provide a physician or programmer with information of when the IMD and programmer were both used and if any errors were encountered for determinations in FDA approval of the devices, for determining if the devices are faulty, and/or for determining the history of people programming the device and changes made to the devices.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection necessitated by amendment. The arguments that Snell nowhere suggest that the server can be controlled by a programmer and that Snell does not suggest the programmer controlling the server and communicating with other servers on the network are not persuasive since the claims do not state that the programmer controls the server

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or communicates with other servers, only that commands entered on the programmer are executed as if entered directly on the remote data center.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Webb et al, Iliff, Bacus et al, and Braun et al, are four teachings of many showing the use of a Telnet type system (i.e. a communication connection using a protocol that emulates a client/server model so that commands entered on the programmer are executed as if entered directly on the remote center) to easily and quickly exchange data over a network/internet.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R Evanisko whose telephone number is 571 272 4945.

The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571 272 4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GRE
February 20, 2005

~ ~
GEORGE R. EVANISKO
PRIMARY EXAMINER
2/20/05